IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ID#: 0612011165
	)	
WILLIE J. WATERS,	)	
	)	
Defendant.	)	

Submitted: October 27, 2008
Decided: January 12, 2009

Upon Defendant's Motion for Postconviction Relief –
SUMMARILY DISMISSED

1. Defendant has filed his first motion for postconviction relief under Superior Court Criminal Rule 61. The motion was properly referred[1] and upon preliminary review[2] it appears the motion is timely, but nonetheless subject to summary dismissal.[3]

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[1] Super. Ct. Crim. R. 61(d)(1); See *Webb v. State*, 888 A.2d 233 (Del. 2005) (TABLE) (ORDER).

[2] *Id*, R. 61(d)(1).

[3] Super. Ct. Crim. R. 61(d)(4); *State v. White*, 2005 WL 1058927, Silverman, J. (Del. Super. Apr. 26, 2005).

2. On September 11, 2007, Defendant pleaded guilty to robbery first degree. Consistent with his plea agreement, Defendant was immediately sentenced to five years in prison followed by probation in decreasing levels. (Defendant was convicted of robbery first degree in 1999.[4])

3. Before accepting Defendant's plea, the court and Defendant had a detailed colloquy, during which Defendant twice admitted his actual guilt. Besides telling the court, repeatedly, that he was in fact guilty, Defendant also told the court, orally and in writing, that he was satisfied with his court-appointed counsel's work on his behalf.

4. In accepting Defendant's plea, the court specifically found that it was knowing, voluntary and intelligent. That finding was based on more than Defendant's in-court admissions of guilt. In further part, the court believed Defendant knew what he was doing based on the colloquy and the informative papers that Defendant, according to him, had carefully read and signed before the colloquy. Quite significantly, the court also appreciated that the plea was a good deal for Defendant.

5. When the court took Defendant's plea, the court relied on more than Defendant's paperwork and admissions. The court, as is its custom when

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[4] See 11 *Del. C.* § 832(b) ("any person convicted of robbery in the first degree shall receive a minimum sentence of . . . (2) Five years at Level V, if conviction is for an offense that was committed within 10 years of the date of a previous conviction for robbery in the first degree. . . .").

accepting pleas in these cases, reviewed the affidavit of probable cause. According to the affidavit and the resulting indictment, Defendant robbed two people at gunpoint. The victims identified Defendant through a photo line up. The police used Defendant's picture in the array because Defendant lured the victims into a trap by giving them his cell phone number. Using the number and identifications, the police went to Defendant's apartment, where they found him and some of the victims' personal effects. At that point, the police had a solid case for two-armed robberies, one for each victim.[5] But, it did not end there.

6. According to the affidavit, when the police arrested Defendant and after he was told of his *Miranda* rights, Defendant confessed. Not only that, he told the police he had given some of the victims' property, a video console, to a "friend." After speaking with the "friend," the police recovered the property from a pawn shop.

7. In short, Defendant's admissions of guilt during the colloquy were corroborated by the affidavit of probable cause, and *vice versa*. Defendant committed two-armed robberies, his guilty plea spared him from a worse outcome. There is no reasonable basis to conclude that Defendant's plea was other than what it appeared to be: knowing, voluntary and intelligent.

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[5] *Washington v. State*, 836 A.2d 485, 487 (Del. 2003) (holding defendant's two charges of robbery did not violate the mulitplicity doctrine where, against one victim, the defendant made "distinct threats, separated in both time and space").

8. Whether Defendant received a *Miranda* warning before he confessed is at the motion's heart. As discussed below, the court is barred from considering Defendant's post-plea, *Miranda* and *Escobedo*[6] claims. The court can observe, however, that even if Defendant's confession were knocked-out, Defendant would have gone to trial on September 11, 2007 and he would have been convicted once the jury heard the victims' testimony, combined with their identification of Defendant and the recovery of their property from Defendant's possession.

9. All in all, again, the plea to one robbery with a five-year recommendation was a break for someone with Defendant's record, especially considering his chances at trial, with or without his confession.

10. The court will not consider the alleged *Miranda* and *Escobedo* violations because Defendant waived them when he pleaded guilty.[7] During the colloquy, the court cautioned Defendant that once the court accepted Defendant's plea, it would be "almost impossible" for him to back out of it.

11. Moreover, not only did Defendant fail to raise his *Miranda* and *Escobedo* claims before his plea, he took no direct appeal. And, he has not shown cause or prejudice for his procedural default.[8] Again, Defendant knew what happened

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[6] *Escobedo v. Illinois*, 378 U.S. 478 (1964).

[7] *Johnson v. State*, 2008 WL 4830853 (Del. Nov. 7, 2008).

[8] Super. Ct. Crim. R. 61(i)(3)(A)-(B); *Flamer v. State*, 585 A.2d 736, 747 (Del. 1990).

when he was arrested and he was no beginner. He is eligible for sentencing as an habitual offender after another felony conviction.[9] Moreover, Defendant had five months before the day of trial and his plea, in which to voice concern about his arrest.

13. Besides his *Miranda* and *Escobedo* claims, Defendant also alleges ineffective assistance of counsel. As to that, his only claim is that counsel failed to file suppression motions. The only details are found in Defendant's claim that before he confessed, he was not given *Miranda* warnings and, in violation of *Escobedo,* he was "incommunicado" and unrepresented.

14. At the point Defendant's counsel would have considered filing motions, he would, at a minimum, have had the affidavit of probable cause from the police. Therefore, he would have had a sworn statement from a police officer explaining, as presented above, that Defendant probably would be convicted regardless of how any suppression hearing turned out. Against that, Defendant's counsel only would have had Defendant's version of the events, which Defendant has not shared with the court. Taking Defendant's confession and admissions of guilt into account, Defendant's prospects would have seemed poor.

15. As explained above, Defendant has failed to show that his counsel's efforts were less than reasonable. Nor has Defendant shown he suffered any prejudice from an alleged shortcoming on his counsel's part. That means Defendant

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[9] 11 *Del. C.* § 4214.

has not satisfied either prong of the *Strickland v. Washington*[10] test for ineffective assistance of counsel.

16. Moreover, in light of the above, the court sees no potential benefit in requiring counsel to explain why he did not file a suppression motion. Based on the current record, including Defendant's motion, a suppression motion probably would have been pointless, and a waste of resources.

For the foregoing reasons, Defendant's motion for postconviction relief is **SUMMARILY DISMISSED**. The Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

/s/ Fred S. Silveman
Judge

cc: Prothonotary
Cari A. Chapman, Esquire
Willie J. Waters

[10] 466 U.S. 668 (1984).